RENDERED: JUNE 20, 2008; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2007-CA-000782-ME

L.D. APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE CHRISTOPHER J. MEHLING, JUDGE
ACTION NO. 06-AD-00063

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; AND E.D., AN INFANT APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CAPERTON, STUMBO, JUDGES. BUCKINGHAM,[1] SENIOR JUDGE.

CAPERTON, JUDGE: This matter involves an appeal by L.D. from the Kenton Family Court's termination of parental rights to her infant child E.D., and

[1] Senior Judge David C. Buckingham, sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110 (5) (b) of the Kentucky Revised Statutes (KRS) 21.580.

judgment ordering placement of the infant child E.D. in the full care, custody, and control of the Cabinet for Health and Family Services. For the reasons set forth herein below, we affirm.

On August 18, 2006, the Cabinet for Families and Children petitioned the court pursuant to KRS 625.050 for an involuntary termination of the parental rights of L.D. to her child, E.D., who was born on December 20, 2005. The minor child in question was initially committed to the Cabinet for Families and Children on February 21, 2006.

A review of the record indicates that at the time of the birth of E.D., L.D.'s competency was called into question. L.D. was subsequently assessed by Dr. Rosenthal, a licensed clinical psychologist, who made a determination of incompetency. Recommendations for treatment, medications, and services were made, but apparently not followed by L.D. at the time of the petition for termination.

The Honorable Christopher J. Mehling of the Kenton Family Court heard this matter on February 15, 2007. On March 2, 2007, findings of fact and conclusions of law were issued, and on March 6, 2007, an order of judgment was entered. The judgment terminated the parental rights of L.D. to E.D. and placed the child in the custody of the Kentucky Cabinet for Health and Family Services with authority to place E.D. for adoption.

In so ruling, the court found by clear and convincing evidence that E.D. was an abused and neglected child as defined by KRS 600.020(1), that for not

less than six (6) months, L.D. had continuously or repeatedly failed, refused, or was incapable of providing essential parental care and protection for the child, and that there was no reasonable expectation of her doing so in the future. Likewise, the Court held that for reasons, other than poverty alone, L.D. continuously or repeatedly failed to provide or was incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary for the child's well-being, and that there was no reasonable expectation of improvement in her conduct in the immediately foreseeable future.

Thereafter, on April 13, 2007, L.D. filed this appeal. In reviewing this matter, we note that counsel who represents L.D. in this appeal was also appointed as guardian ad litem for L.D. at trial. Counsel was appointed as such due to concerns about L.D.'s mental deficiencies. Further, counsel for L.D. has filed an *Anders* brief in this matter. In so doing, counsel concedes that no meritorious issues were found to present on appeal to this court. *Anders v. California,* 386 U.S. 738 (1967).

Accordingly, it is our duty to review the record independently for reversible error, and to preserve L.D.'s right to fundamental fairness. Having done so, we find no preserved allegation of error, nor any issue apparent on the face of the record to indicate any merit to this appeal. We therefore affirm the ruling of the trial court.

Our standard of review in termination of parental rights cases is set forth in *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116-17 (Ky.

App. 1998). It is clear that the trial court has a great deal of discretion in determining whether the child fits within the abused or neglected category and whether the abuse or neglect warrants termination. *Department for Human Resources v. Moore*, 552 S.W.2d 672, 675 Ct. App. (1977). This Court's standard of review in a termination of parental rights action is confined to the clearly erroneous standard in CR 52.01, based upon clear and convincing evidence, and the findings of the trial court will not be disturbed unless there exists no substantial evidence in the record to support its findings. *V.S. v. Commonwealth, Cabinet for Human Resources*, 706 S.W.2d 420, 424 (Ky. App. 1986).

Clear and convincing proof does not necessarily mean uncontradicted proof. It is sufficient if there is proof of a probative and substantial nature carrying the weight of evidence sufficient to convince ordinary prudent-minded people. *Rowland v. Holt*, 70 S.W.2d 5, 9 (Ky. 1934).

After reviewing the record in detail, we find that the record contains sufficient evidence to support the judgment. Based upon our review of the record, we find that substantial evidence exists to support the trial court's decision in finding that E.D. was an abused and/or neglected child, and in finding that said neglect warranted termination. Finding no reversible error, we affirm the judgment of the Kenton Family Court.

ALL CONCUR.

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